

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
Miami Valley Broadcasting Corporation	)	MB Docket No. 13-201
	)	
For Modification of the Television Market	)	CSR No. CSR-8824-A
For WHIO-TV, Dayton, Ohio	)	
	)	Facility Id. No. 41458
To: Office of the Secretary		
Attn: Chief, Policy Division, Media Bureau		

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**OPPOSITION TO PETITION FOR SPECIAL RELIEF**

Block Communications, Inc.  
Lima Communications Corporation and West  
Central Ohio Broadcasting Corporation

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September 3, 2013

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Lima Communication Corporation, licensee of WLIO, Lima, Ohio and West Central Ohio Broadcasting Corporation, licensee of WOHL-CD, Lima, Ohio, subsidiaries of Block Communications, Inc.<sup>1</sup> (“BCI”), oppose the Petition for Special Relief filed by Miami Valley Broadcasting Corporation and its parent Cox Media Group, licensee of WHIO-TV, Dayton, Ohio (“WHIO-TV”) seeking to extend WHIO-TV’s must carry market as it relates to 23 communities located in Auglaize County (“Auglaize County Communities”) and 9 communities located in Allen County (“Allen County Communities”). Allen County has always been part of the Lima, OH designated market area (“DMA”) and Auglaize County has been assigned by Nielsen to the Lima DMA for the 2013-2014 Television Year. The Petition fails to demonstrate satisfaction of the statutory factors or any other market modification criteria sufficient to warrant assignment of the two counties to WHIO-TV’s local market.

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<sup>1</sup> Block Communications, Inc. is a 112-year-old privately held diversified media holding company headquartered in Toledo, Ohio. BCI’s media properties include broadcast television stations, cable television systems, newspapers and telephone operations.

## **I. INTRODUCTION AND SUMMARY**

### **The BCI Lima Stations**

BCI is the ultimate parent company of the two licensed broadcast stations, WLIO and WOHL-CD, which are operated as one entity under the leadership of the Lima Communications Corporation. The Lima DMA is one the nation's smallest – ranked 199 out of 210 – with an estimated 51,240 TV households as of January 1, 2013.<sup>2</sup> BCI has served the Lima DMA for over 40 years through its ownership of WLIO, the Lima DMA NBC affiliate.<sup>3</sup> Operating broadcast stations in a market as small as Lima presents significant challenges, but BCI has been committed to investing in and serving Lima, the county seat of Allen County, and the surrounding northwest central Ohio region that includes Auglaize County. In February 2009, BCI further demonstrated its commitment to the Lima region with its purchase of the broadcast properties of TV67, Inc. which included, for the Lima DMA, the low-power FOX, ABC and CBS network affiliates, WOHL-CD (FOX); WLQP-LP (ABC); and WLMO-LP (CBS).<sup>4</sup>

All BCI channels, ABC, CBS, NBC, and FOX, are carried on two transmitters, full-power WLIO channel 8 (8.1 NBC and 8.2 FOX) and low-power WOHL-CD channel 35 (35.1

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<sup>2</sup> Nielsen, Local Television Market Universe Estimates, <http://www.nielsen.com/content/dam/corporate/us/en/docs/solutions/measurement/television/2012-2013-DMA-Ranks.pdf>.

<sup>3</sup> See Exhibit A, Declaration of Kevin Creamer, ¶ 3.

<sup>4</sup> Effective July 13, 2009, BCI launched digital service for its NBC and FOX affiliates on WLIO HD channel 8.1/8.2. On August 17, 2009, BCI did the same for its ABC and CBS affiliates on WOHL-CD HD channel 35.1/35.2. At the same time, the call letters and network affiliation of the stations were changed as follows: WLIO-NBC became WLIO 8.1-NBC; WOHL-FOX became WLIO 8.2-FOX; WLQP-ABC became WOHL 35.1-ABC; and WLMO-CBS became WOHL 35.2-CBS. Nielsen designations for the four channels respectively, are: WLIO (NBC); ELIO (FOX); WOHL (ABC); EOHL (CBS). For ease of reference, in general, this Opposition will refer to the BCI multicast sub-channels by their network affiliation rather than call letters. In 2010, the ABC (WLQP-LP) and CBS (WLMO-LP) stations were converted to translators due to citizen concerns over the technology and cost of the digital television transition. The CBS station remained on channel 38 as an analog translator of WOHL-CD CBS 35.2. The ABC station, due to displacement by WISE (Ft. Wayne, IN), was moved to vacant channel 25 as an analog translator of WOHL-CD ABC 35.1. Both the ABC and CBS channels are on the air via Special Temporary Authority, and have Construction Permits for digital transmission.

ABC and 35.2 CBS).<sup>5</sup> For ease of reference, the licensed stations' four channels will be referred to collectively as the "BCI Lima Stations." By utilizing digital multicast capability, BCI is able to deliver programming of all four national television networks into the nation's 199<sup>th</sup> smallest DMA. Even more importantly, BCI delivers local news and programming of local interest to Lima area residents. BCI simulcasts its morning, early and late evening local news programming.<sup>6</sup> News programming developed by the BCI Lima NBC station is simulcast on its ABC and CBS stations. Although these stations do not create their own news programming, their existence, including the revenue generated by the CBS station, supports the NBC station's ability to provide comprehensive local news, weather and sports programming. The BCI Lima Stations are co-branded and known as "Your Hometown Lima Stations" and provide strong signal coverage throughout Allen County and most of Auglaize County, including the Auglaize County Communities at issue by this Petition.<sup>7</sup> The four stations function as an economic unit, providing unified financial and other support for local community groups and activities and drawing local advertisers largely as a group rather than on a station-by-station basis.<sup>8</sup> They are generally, although not uniformly, carried as a group in the majority of the Auglaize and Allen Cable Communities WHIO-TV seeks to include in its Dayton market.<sup>9</sup> The investment in and coordinated efforts of the BCI Lima Stations have strengthened the stations and increased their

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<sup>5</sup> WLIO is a commercial full power station. WOHL-CD is a commercial low power Class A station. All transmitters are located at 1424 Rice Avenue, Lima, OH. Site Location: 40-44-51.0 N 84-07 54.5 W (NAD 27), or 40-44-51.2 N 84-07-54.3 W (Converted to NAD 83). Structure Registration Number 1014519.

<sup>6</sup> As the Petition notes, BCI's NBC affiliate WLIO provides significant local news service and distributes that programming for simulcast by its sister stations. Petition at 35 n.109. Specifically, BCI simulcasts its weekday early morning news program on its ABC and NBC stations and simulcasts its weekday early evening and late evening news program on its ABC, CBS and NBC stations. See Exhibit A, ¶¶ 6-7.

<sup>7</sup> See Exhibit B, BCI Lima Station Coverage Maps.

<sup>8</sup> See Exhibit A, ¶ 5.

<sup>9</sup> See Exhibit C, Cable Systems Carrying BCI Lima Stations in Auglaize and Allen Counties.

ratings.<sup>10</sup>

### **The Lima DMA**

The Lima DMA for the current 2012-2013 Television Year consists of just two counties – Allen County and Putnam County.<sup>11</sup> Auglaize County and Putnam County each have at different times been included in and excluded from the Lima DMA, with Allen County, home of the city of Lima, forming the constant core of the Lima DMA.<sup>12</sup> Most recently, Nielsen announced that once again Auglaize County, which had been assigned to the Dayton DMA for the 2012-2013 Television Year, would be included in the Lima DMA for the 2013-2014 Television Year.<sup>13</sup> Nielsen's re-assignment of Auglaize County back to the Lima DMA was based on four recent combined survey periods: May 2012, July 2012, November 2012, and February 2013.<sup>14</sup> As noted in the Petition, Auglaize County has been included in the Lima DMA in 8 of the 14 years since 1999-2000.<sup>15</sup> Thus, Nielsen's review of the recent survey periods and its corresponding change of assignment for Auglaize County should have come as neither a surprise nor cause for alarm for WHIO-TV.

### **The Petition Gives No Concrete Reason Why Must Carry Rights Are Needed**

Other than evincing frustration with Nielsen's DMA assignment, the Petition offers little concrete indication why Dayton-based WHIO-TV is suddenly seeking or requires must carry

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<sup>10</sup> See Exhibit D, BCI Lima CBS Station Ratings Increase.

<sup>11</sup> The Petition erroneously states that the Lima DMA consists of a single county, Allen, which WHIO wishes to claim as its local market. See Petition at 32 n.97.

<sup>12</sup> Exhibit E, Composition History of Lima DMA.

<sup>13</sup> See, Exhibit F, Nielsen Auglaize County Letter. See also Petition at 20; Petition, Exhibit C (Nielsen DMA Assignments 2000-2013).

<sup>14</sup> Exhibit F.

<sup>15</sup> Petition, Exhibit C.

status in Auglaize and Allen Counties to ensure cable carriage.<sup>16</sup> In BCI's experience, strong network affiliates such as WHIO-TV rarely, if ever, assert must carry rights to obtain cable carriage, preferring instead to seek compensation in exchange for granting retransmission consent for carriage. WHIO-TV's station ratings in Auglaize and Allen Counties, as attested by the Petition, likely ensure continued voluntary carriage on area cable systems.<sup>17</sup> The Petition itself recounts a long history of carriage in both the Auglaize and Allen County Communities.<sup>18</sup> The Petition also makes the unsubstantiated assertion that "[g]etting a station's market right is increasingly important today as cable operators nationwide have been less and less willing to continue providing 'out-of-market' carriage to broadcasters."<sup>19</sup> Significantly, WHIO-TV does not claim that Time Warner Cable ("TWC") or any of the small cable operators in the two counties are planning to drop carriage of WHIO-TV such that must carry status is necessary to preserve its carriage on either Auglaize or Allen County cable systems.<sup>20</sup> In fact, local cable

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<sup>16</sup> Petition at 8, 20 & n.65 ("To eliminate any future confusion over whether the Auglaize County Communities are part of WHIO-TV's market, CMG seeks a declaration that the station satisfies the statutory criteria for inclusion of the Auglaize County Communities in WHIO-TV's market;" and "To the extent the requested relief is unavailable under Sections 76.7(a)(1) and 76.59(a) of the Commission's rules, CMG requests a declaratory ruling establishing Auglaize County's proper market assignment pursuant to Section 1.3 of the Commission's rules. 47 U.S.C. § 1.3."). See also *id.* at 21 ("the question of these [Auglaize] communities' DMA assignment should not be left to future decisions by Nielsen. Instead the Commission should settle the issue now by declaring the Auglaize County Communities a permanent part of WHIO-TV's market.") No similar Nielsen assignment-related reason is cited in support of WHIO-TV's request that Allen County be included in its DMA; the request rests solely on the station's desire to see that its long-term service to those communities "is preserved." *Id.* at 30. Displeasure with Nielsen's re-assignment of Wayne County, IN from the Dayton, OH DMA to Fort Wayne, IN DMA also animates the Petition's request for market modification to bring the 10 Indiana communities back to WHIO-TV's local market. See *id.* at 9.

<sup>17</sup> See *id.* at 4-5, 27, 35-36 (WHIO-TV achieves the highest ratings in every day part in Auglaize County; WHIO-TV achieves the third highest rating and share in Allen County among the nine stations that received measurable ratings or at least a one percent share).

<sup>18</sup> *Id.* at 22-23, 31-32.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> The absence of such a threat makes the instant situation notably distinct from other market modification orders where continued carriage in the cable communities was cited as a reason for granting a broadcaster's petition. See *Commonwealth Broadcasting Group, Inc.; For Modification of the Greenwood/Greenville, Mississippi DMA*, CSR-8203-A, Memorandum Opinion and Order, 25 FCC Rcd 213 ¶ 21 (MB, 2010) (market modification granted where, absent must carry status, petitioner's carriage would be jeopardized in the subject communities due to its network's direction that the affiliate can no longer seek carriage via retransmission consent as it had done in the past).

systems have historically carried multiple CBS affiliates, including some systems that have carried three CBS affiliates for over 40 years – with many systems currently carrying WHIO-TV (Dayton), WOHL-CD 35.2 (Lima), and WBNS (Columbus).<sup>21</sup> WHIO-TV is currently carried on Lima DMA cable systems, has a long history of carriage on them, and is also on the Commission’s list of significantly viewed stations in Auglaize and Allen Counties.<sup>22</sup> Claims that WHIO-TV needs Commission intervention to assure cable carriage are simply unwarranted.

### **Grant of the Petition Would Harm the BCI Lima Stations**

The grant of the Petition would significantly weaken the economic position of WHIO-TV’s competitors who are licensed to serve the Lima DMA, especially the in-market CBS station owned by BCI. If granted, WHIO-TV’s Petition would grant it must carry rights over approximately 70% of the population in the Lima DMA, including Lima itself – the community of license of the in-market BCI Lima CBS station.<sup>23</sup> Further, because the corresponding in-market CBS affiliate is a low-power station with limited, if any, must carry rights,<sup>24</sup> WHIO-TV would, by exercising its newly granted must carry rights, have the ability to severely weaken the in-market BCI CBS station and, in turn, its sister BCI Lima Stations. By requesting that the Commission declare approximately 70% of the population of the Lima DMA to be part of the Dayton CBS station’s natural economic market, including the BCI Lima Stations’ city of license Lima itself, WHIO-TV brings into question the very need for a separate Lima DMA.

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<sup>21</sup> See Exhibit G, CBS Station Historical Carriage. See also Petition, Exhibits L & Q. WLMO-LP started broadcasting in 1998 as W65DP Lima. CBS programming was provided solely over-the-air until March 2006 when Time Warner Cable agreed to cable carriage. BCI purchased the station in February 2009. On July 13, 2009 WLIO commenced programming in high definition (“HD”), followed by WOHL-CD on August 27, 2009. Exhibit A, ¶ 4.

<sup>22</sup> Petition at 8; FCC Significantly Viewed List, <http://transition.fcc.gov/mb/significantviewedstations062813.pdf> (last updated June 28, 2013).

<sup>23</sup> Exhibit H, Census Information-Impact of Grant.

<sup>24</sup> See 47 U.S.C. § 534(b)(2)(A) (under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station where the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry).



### **Expansion of WHIO-TV's Market Is Uncalled for and Unwarranted**

This situation simply fails to warrant the requested market modification. The Commission should decline WHIO-TV's invitation to insert itself into the Nielsen county assignment process in this manner. The grant of the Petition would unduly upset the economic expectations underlying the network affiliate relationship for the BCI Lima CBS Station WOHL-CD 35.2 and cause economic harm to the BCI Lima Stations as a whole, thus weakening and endangering their ability to provide local television service to the Lima DMA, a result the Commission has never countenanced under its market modification rules. The BCI Lima Stations epitomize the value of local television broadcasting through their significant and extensive investment in community groups and organizations in the Auglaize and Allen County Communities. The BCI Lima Stations provide a singular example of the benefits of the DTV transition, using digital technology to bring the programming of the four national networks to one of the nation's smallest television markets along with broad and deep coverage of local news and events of interest to the Auglaize and Allen County Communities.

The statutory market modification process was intended to promote the goal of local television service and protect the carriage rights of stations in their natural home markets. WHIO-TV seeks to insert the Commission into the Nielsen market designation process. Allowing such an incursion into the scope of the smaller DMAs and weakening the in-market local low-power CBS station's ability to compete would set a dangerous precedent.

As demonstrated below, the Petition fails to support the requested market modification under the statutory factors cited or other evidence submitted. An evaluation of the statutory factors conclusively shows that granting WHIO-TV's Petition as it relates to the Auglaize and Allen County Communities would have the complete opposite effect from what Congress

intended by undermining, rather than enhancing, localism. Further, none of the other evidence regarding economic nexus warrants modification of WHIO-TV's local service area to include either the Auglaize or Allen County Communities. As explained below, localism is far better served by the denial of WHIO-TV's Petition.

## **II. WHIO-TV FAILS TO SATISFY THE STATUTORY FACTORS FOR MARKET MODIFICATION**

The cable carriage scheme adopted by Congress in the 1992 Cable Act is based primarily on the carriage of local broadcasting stations throughout their industry-defined DMAs.<sup>25</sup> Congress recognized, however, that in certain circumstances the DMA may not fully reflect a particular station's market.<sup>26</sup> Thus, Congress provided for a market modification mechanism – codified in Section 614(h) of the 1992 Cable Act<sup>27</sup> – that allows an individual broadcast station, upon a demonstration that the change would “better effectuate” the purposes of the signal carriage rules, to ask the Commission to include additional communities in its local television market for purposes of cable carriage.<sup>28</sup>

The market modification procedures were designed to advance the objective of Congress “to ensure that television stations be carried in the areas which they serve and which form their economic market.”<sup>29</sup> WHIO-TV is already designated as significantly viewed in the two counties and is carried on the cable systems in the two counties. Commission intervention is not

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<sup>25</sup> The Communications Act and, in some places, the FCC's rules, refer to “ADIs” instead of “DMAs” when discussing television markets. Because Arbitron no longer provides ADI statistics, the FCC adopted DMAs for market definition purposes in May, 1999. *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, CS Docket No. 95-178, Order On Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999). For purposes of this Opposition, the term “DMA” is used in place of ADI, where appropriate, to reflect the FCC's usage of DMA statistics.

<sup>26</sup> See House Committee on Energy and Commerce, Cable Television Consumer Protection and Competition Act of 1992, H.R. Rep. No. 102-628, at 97 (1992) (“House Report”).

<sup>27</sup> 47 U.S.C. § 534(h).

<sup>28</sup> *Id.* at § 534(h)(1)(C)(i).

<sup>29</sup> See House Report at 97.

required to assure its carriage as BCI's local in-market CBS affiliate is not able to exercise network non-duplication against WHIO-TV nor is it able to demand must carry itself based on its status as a low-power station.<sup>30</sup>

In determining which modifications “better effectuate” the stated objective, Congress directed the Commission to “afford particular attention to the value of localism,”<sup>31</sup> and provided a list of statutory factors for the FCC to consider when evaluating a station's addition request.<sup>32</sup> Congress did not intend for these factors to be exclusive, and the Commission may and does consider other factors relevant to whether a community is part of a station's local service area, including the distance between the stations and the cable communities and other indicia of a market nexus between the station and the cable communities at issue.<sup>33</sup>

WHIO-TV claims that it is entitled to modification of its local market for both the Auglaize and Allen County Communities on the grounds that its close connection to these communities satisfies three of the four statutory criteria and other criteria for including those communities in its must carry television market.<sup>34</sup> The BCI Lima Stations respectfully submit

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<sup>30</sup> See 47 C.F.R. § 76.92(f) (“A community unit is not required to delete the duplicating network programming of any television broadcast station which is significantly viewed in the cable television community pursuant to § 76.54”); 47 C.F.R. § 76.56(b)(4)(i) (“Under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station”).

<sup>31</sup> 47 U.S.C. § 534(h)(1)(C)(ii).

<sup>32</sup> *Id.* at § 534(h)(1)(C)(ii) (“(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; (II) whether the television station provides coverage or other local service to such community; (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.”)

<sup>33</sup> See 47 C.F.R. § 76.59(b); House Report at 97; *Market Modifications and the New York Area of Dominant Influence Petitions for Reconsideration and Applications for Review of: Cablevision Systems Corporation, etc., CSR 3873-A, etc., Memorandum Opinion and Order*, 12 FCC Rcd 12262, 12267-68 ¶ 10 (1997), *aff'd*, *WLNY-TV, Inc. v. FCC*, 163 F.3d 137 (2d Cir. 1998).

<sup>34</sup> The Petition does not directly allege that WHIO-TV satisfies the third statutory factor concerning whether other television stations also provide local service to the cable communities at issue; rather for each county it simply mentions the factor as part of its case under the second statutory factor concerning whether it provides “other local

that WHIO-TV has not shown that it meets the first, second and fourth statutory market modification criteria, and is therefore not entitled to the requested modification of its television market.

**A. Historical Cable Carriage Shows the BCI Lima Stations are the Local Stations.**

WHIO-TV provides evidence that it has been historically carried by cable systems in the Auglaize and Allen County Communities. However, the BCI Lima Stations have likewise been historically carried on the same systems.<sup>35</sup> Where cable systems have historically carried signals from both television markets in issue, the Commission has found this factor to be “of marginal assistance in resolving the issue of whether the [cable] communities should be moved into [the broadcaster’s] market.”<sup>36</sup> Accordingly, it should be given no little weight in this instance.

**B. Over-the-Air Signal Coverage and Other Local Service Shows the BCI Lima Stations are the Local Stations.**

WHIO-TV contends that the second factor is met based on its over-the-air service, proximity to the communities and local service. Applying the same factors to the BCI Lima Stations, however, demonstrates that Nielsen’s inclusion of the subject communities in the Lima

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service” to the communities. See Petition at 27, 34-35. WHIO-TV’s claims with respect to the local service provided by the BCI Lima Stations will be addressed in that context. WHIO-TV would not be entitled to rely on satisfaction of the third statutory factor in any event, as the Commission treats this solely as an enhancement factor in cases in which there is no in-market affiliate providing service. See, e.g., *Pappas Telecasting Incorporated For Modification of Television Broadcast Station KMPH’s ADI*, CSR-3902-A, Memorandum Opinion and Order, 11 FCC Rcd 6102 ¶ 14 (CSB, 1996) (the third criterion was intended to enhance a station’s claim where it could be shown that other stations do not serve the community as issue); *Ackerley Media Group, Inc.; For Modification of the Television Market of Television Station KION (TV), Monterey, California*, CSR-6130-A, Memorandum Opinion and Order, 18 FCC Rcd 16199 ¶ 9 (MB, 2003) (when other stations serve the cable communities, the third “enhancement factor is not applicable”); *Seal Rock Broadcasters, LLC; For Modification of the Television Market of Television Station KCBA(TV), Salinas, California*, Memorandum Opinion and Order, CSR-6131-A, 18 FCC Rcd 16262 ¶ 9 (MB, 2003) (same).

<sup>35</sup> WLIO, the BCI Lima NBC station has been historically on each of the systems. The other BCI Lima Stations have also been carried on several of the systems, including the BCI Lima CBS station’s predecessor WLMO-LP since 2006. In addition, stations from other DMAs have also enjoyed historical carriage, most notably WBNS-TV the Columbus CBS affiliate. See Exhibit I, Cable System Historical Carriage of Non-Dayton Stations.

<sup>36</sup> *Group W Television, Inc. San Francisco, California For Modification of the San Francisco, California ADI, etc.*, CSR-3925-A, etc., Memorandum Opinion and Order, 10 FCC Rcd 2737 ¶ 21 (CSB, 1995) (“Group W Television”).

DMA is correct.

**1. BCI Lima Stations Provide More Extensive Over-the-Air Signal Coverage.**

A comparison of the over-the-air signal coverage demonstrates that the BCI Lima Stations provide a stronger signal to the Lima DMA Communities than WHIO-TV. WHIO-TV states that its Grade B Signal contour covers “nearly” all of the Auglaize County Communities and relies on Longley-Rice analysis to support its claim that it provides coverage over all of Auglaize County.<sup>37</sup> WHIO-TV’s Petition acknowledges that the Allen County Communities “lie just to the north of WHIO-TV’s predicted 41 dBu service area based on the Commission’s traditional prediction methodology and relies instead on a predicted service contour based on Longley-Rice methodology to show coverage in Allen County.”<sup>38</sup> What WHIO-TV’s evidence does not show, however, is that the BCI Lima Stations, including the BCI Lima CBS station, cover the Allen County Communities and the Auglaize County Communities with a Grade A signal contour.<sup>39</sup>

As with historical cable carriage, the Commission places little weight on Grade B coverage where the in-market station places an “even higher signal” over the communities at issue.<sup>40</sup> Accordingly, WHIO-TV’s claim of over-the-air coverage does not advance its claim given the strong in-market signals provided by the BCI Lima Stations, including the CBS affiliate.

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<sup>37</sup> Petition at 23. BCI uses the older analog “Grade A/B” signal contour terminology in this Opposition solely in response to WHIO-TV’s use of this terminology and in view of the fact that Commission precedents use of it. The relevant contour for measuring signal coverage of digital stations such as the BCI Lima Stations in the Noise Limited Service Contour.

<sup>38</sup> *Id.* at 32.

<sup>39</sup> See Exhibit B.

<sup>40</sup> See *Group W Television*, ¶ 22.

## 2. The BCI Lima Stations Are Much Closer to the Auglaize and Allen County Communities.

### Proximity

Despite WHIO-TV's assertions that its close proximity to the Auglaize and Allen County Communities justifies their inclusion in its local television market, the facts demonstrate the contrary.<sup>41</sup> An examination of the proximity of each station to the Auglaize and Allen County Communities demonstrates that the BCI Lima Stations are significantly closer to each community than WHIO-TV. The following table shows the mileage for WHIO-TV and the BCI Lima Stations for each of the Cable Communities listed in Exhibit A to the Petition.<sup>42</sup>

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<sup>41</sup> The Petition states that "WHIO-TV is located an average of just 56.6 miles from the Auglaize County Communities;" and that the Allen County Communities are located "just an average of 68.4 miles from WHIO-TV's transmitter." Petition at 23-24, 32-33. Although the Petition avers that these distances are well within the range that past Commission cases have approved for inclusion of stations in a market, the cases are distinguishable from the instant matter on other grounds. See *Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable*, CSR-6954-A, 22 FCC Rcd 13642 ¶¶ 9, 15 (MB, 2007) (denying modification to exclude communities between 93 and 106 miles away from station transmitter where it was in the public interest for subscribers in these communities to receive the broadcaster's specialty programming, much as they were receiving programming from other similarly distant Los Angeles broadcasters that were carried on the cable operator's system in these communities; it is inapposite to draw a comparison between signal carriage distances appropriate in a large western DMA such as Los Angeles and the Lima DMA); *CHANNEL 33, INC. Miami, Florida For Modification of Station WBFS-TV's ADI*, CSR-3884-A, Memorandum Opinion and Order, 11 FCC Rcd 3579 ¶¶ 8, 17-18 (CSB, 1996) ("*Channel 33*") (Miami, FL broadcaster requested inclusion of communities approximately 41 to 81 miles away from its transmitter; market modification granted only with respect to more proximate communities covered by the station's Grade A contour while excluding nearly all communities that the broadcaster failed to cover with a Grade B signal); *Pappas Telecasting Incorporated For Modification of Television Broadcast Station KMPH's ADI*, CSR-3902-A, 11 FCC Rcd 6102 ¶¶ 9, 13 (CSB, 1996) (granting addition of a community located roughly 65 miles from the station's community of license where the broadcaster covered the community with a Grade B signal and provided unique programming that garnered substantial ratings in that community). None of these cases warrant grant of the instant Petition.

<sup>42</sup> BCI distances were measured from the BCI Lima Transmitter located at 40° 44' 51" N, 84° 07' 55" W. The distances were calculated using How Far Is It?, <http://www.indo.com/distance>, the same tool cited by WHIO-TV as being used in calculating Exhibit A to the Petition.

### Auglaize County

Community	Distance to WHIO-TV Transmitter (Miles)	Distance to BCI Lima Transmitter (Miles)		Community	Distance WHIO-TV Transmitter (Miles)	Distance to BCI Lima Transmitter (Miles)
Cridersville	64	7		Buckland	61	11
Moulton TWN	56	13		Clay TWN	56	16
Wapakoneta	58	13		Pusheta TWN	58	16
New Bremen	49	25		Minster	46	28
St. Johns	57	14		Duchouquet TWN	59	11
Uniopolis	60	10		Jackson TWN	46	28
St .Mary's	56	20		Wayne TWN	62	13
Noble TWN.	59	18		German TWN	49	25
Washington TWN	50	19		Goshen TWN	59	16
New Knoxville	53	20		Union TWN	61	10
St Mary's TWN	61	15				

### Allen County

Community	Distance to WHIO-TV Transmitter (Miles)	Distance to BCI Lima Transmitter (Miles)		Community	Distance WHIO-TV Transmitter (Miles)	Distance to BCI Lima Transmitter (Miles)
Lima	70	1		Spencerville	67	12
Harrod	69	11		Fort Shawnee	66	5
Auglaize TWN	67	11		Bath TWN	71	4
American TWN	71	2		Shawnee TWN	67	4
Spencer TWN	68	12				

### **Evidence of Natural Television Market**

Furthermore, the “labor flow” statistics cited by WHIO-TV to demonstrate that residents of these communities are a natural part of its Dayton DMA are not persuasive.<sup>43</sup> First, the figures fail to demonstrate that Auglaize County is a natural part of the Dayton DMA. Rather, they show only what one might expect: (i) the Dayton DMA is a major regional metropolitan area with more job opportunities than the small Lima DMA and thus the Dayton DMA is going to employ slightly more Auglaize County residents (769) than Lima; and (ii) the Dayton DMA has more people than the small Lima DMA and thus obviously more people who travel to Auglaize County to work are going to come from the Dayton DMA rather than from the Lima DMA. Also, presumably these people are traveling back to the Dayton DMA after work and watching television where they live.

The Petition’s use of such statistics for the Allen County Communities is even more unpersuasive; the statistics cited can hardly be considered helpful to WHIO-TV’s cause. WHIO-TV acknowledges that a majority of Allen County residents live and work in Allen County, but that when they leave Allen, the number one and number three destinations are two nearby counties currently within the Dayton DMA, including Auglaize County which is now being re-assigned to the Lima DMA by Nielsen.<sup>44</sup> The Lima DMA has at various times included only Allen County and/or Allen County and either Auglaize County or mostly rural Putnam County. It stands to reason that if a resident of Allen County is going to leave their county for work it is going to be to a neighboring county which almost always, given the 1-2 county make up of the Lima DMA, will put him or her in a different DMA. WHIO-TV’s “labor flow” statistics are a red herring. That Auglaize County provides the largest number of out-of-county workers to

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<sup>43</sup> See Petition 24 n.74 & 33 n.103.

<sup>44</sup> *Id.* at 24 n.74.



Allen County justifies, rather than detracts from, Nielsen's decision to treat it as part of the Lima DMA. Rather than support WHIO-TV's claim that the labor flow evidence shows Allen County is a natural part of the Dayton DMA, it shows the opposite: the Auglaize County Communities and, most particularly, the Allen County Communities, form the core communities of the Lima DMA.

The Lima DMA is the 199<sup>th</sup> smallest in the nation. For the 2013-2014 Television Year it will consist of three counties: Auglaize, Allen and Putnam.<sup>45</sup> Lima has been a recognized metropolitan statistical area ("MSA") since 1950, and serves as the anchor of Allen County; from 1973 until 2003, the MSA was defined to include Auglaize County.<sup>46</sup> The Lima MSA itself is part of the west central Ohio Lima-Van Wert-Wapakoneta Combined Statistical Area ("CSA") that includes Allen, Auglaize and Van Wert Counties.<sup>47</sup> Dayton, in contrast, is part of a separate and larger CSA to the south comprised of Dayton, Springfield and Greenville. The city of Lima is the largest inland city in west central Ohio and sits mid-way between Detroit, Cincinnati, Dayton, Indianapolis, Columbus and Fort Wayne. Lima functions as a regional economic hub serving neighboring communities, including the Auglaize County Communities. Even the Petition recognizes that the Allen County Communities WHIO-TV claims for itself "are centered on Lima, the largest city and county seat."<sup>48</sup> Auglaize County is three counties and some 50 miles north of Dayton, but only 10 miles south of Lima, in neighboring Allen County. Evidence

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<sup>45</sup> See Exhibit E.

<sup>46</sup> Lima was first recognized as a statistical area by the Census in 1950. It is now called the "Lima Metropolitan Statistical Area (MSA)." In 1971 Putnam and Van Wert Counties were added; in 1973 Auglaize County became part of the area. In 2003, Auglaize was re-designated as the Wapakoneta Micropolitan Statistical Area. At no time did Auglaize form part of the separate Dayton MSA. See Exhibit J, Lima Metropolitan Statistical Area History.

<sup>47</sup> See "Statistical Areas: Micropolitan, Metropolitan, & Combined for Ohio, 2003," [http://nodisnet1.csuohio.edu/nodis/2000reports/2000SF3\\_profs/map\\_micro\\_metro\\_comb.pdf](http://nodisnet1.csuohio.edu/nodis/2000reports/2000SF3_profs/map_micro_metro_comb.pdf) (prepared by Cleveland State University, May 5, 2005, based on 2003 data from the US Census Bureau, showing Lima-Van Wert-Wapakoneta (Auglaize) as a separate CSA from Dayton-Springfield-Greenville).

<sup>48</sup> Petition at 30.

concerning the proximity of the communities to Lima, the fact that most Auglaize and Allen County residents work and shop within the two counties, and that the Lima statistical area is comprised of cable communities in these two counties, shows that the Auglaize and Allen County Communities sought by the Petition for the Dayton DMA in fact form the core communities of the Lima DMA.

The Commission has repeatedly declined to modify one market to include the core community of another market.<sup>49</sup> The Commission has stated that by granting it the authority to modify market areas, it did not “believe that Congress in the 1992 Cable Act intended us to alter the basic structures of [DMAs] themselves.”<sup>50</sup> Following these precedents, the Media Bureau recently declined to modify a market on this basis, noting “[i]n particular, we do not modify one market to include within it the core community of another market.”<sup>51</sup> WHIO-TV is asking for a modification that, among other things, would add to the Dayton-based station’s local market the Lima DMA’s principal city, which is also the Allen County seat, a regional hub for both Allen and Auglaize Counties, and the community of license for the BCI Lima Stations. Our research has not revealed any instance where the Commission has permitted appropriation of the very heart of another DMA’s core communities; it should permit such incursion here.<sup>52</sup>

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<sup>49</sup> See, e.g., *Petition of: Agape Church, Inc.; For Modification of Station KVTJ (TV)'s ADI*, CSR-5310-A, Memorandum Opinion and Order, 14 FCC Rcd 2309 ¶ 30 (CSB, 1999) (denying a station must carry status for communities located within a station’s Grade B contour, but which nevertheless formed the core or “hub” of another DMA); *Free State Communications, LLC; For Modification of the Topeka, Kansas DMA*, CSR-8121-A, Memorandum Opinion and Order, 24 FCC Rcd 7339 ¶ 24 (MB, 2009) (“*Free State*”) (declining to grant Topeka ABC affiliate KTKA’s request to include core communities of Kansas City DMA in its market); *Channel 33*, 11 FCC Rcd 3579 ¶ 17 (declining to allow WBFS, a Miami station, to extend its Miami ADI to include the city of West Palm Beach, FL, as well as neighboring communities, a core community of the West Palm Beach-Fort Pierce-Vero Beach ADI).

<sup>50</sup> *Channel 33*, 11 FCC Rcd 3579 ¶ 17.

<sup>51</sup> *Free State*, 24 FCC Rcd 7339 ¶ 24.

<sup>52</sup> See, e.g., *Channel 33*, 11 FCC Rcd 3579 ¶ 17 (modifications to include the core community of another ADI does not promote “Congress’ objective to ensure that television stations be carried in the areas which they serve and form their economic market, but in fact modifies the basic nature and competitive relationships within the neighboring market”).

For all these reasons, the factor of proximity to the communities clearly favors the BCI Lima Stations, demonstrating that the Auglaize and Allen County Communities should remain in the Lima DMA and not be declared part of Dayton-based WHIO-TV's local market.

**3. The BCI Lima Stations Provide Far More Local Service to the Auglaize and Allen County Communities.**

WHIO-TV claims to provide "significant local programming." In support, WHIO-TV relies on news segments and weekly public affairs programs aired on its Dayton regional newscasts that it claims are relevant to residents of the Auglaize and Allen County Communities. The Petition cites 65 news segments regarding the Auglaize County Communities between September 2010 and September 2012, an average of less than one news segment per week.<sup>53</sup> The Petition notes that due to the small size of the Auglaize County Communities, none has a television station licensed to it so that WHIO-TV's coverage of Auglaize County provides a local news service "unlikely to be provided by other television stations in the region."<sup>54</sup> With respect to Allen County, the Petition notes that WHIO-TV provides "comprehensive coverage" of news, public affairs, and farm reports of interest to local viewers.<sup>55</sup> During the same two-year period, the Petition cites 22 news segments regarding the Allen County Communities produced by WHIO-TV.<sup>56</sup> With respect to Allen County coverage, the Petition acknowledges that the local Lima station, WLIO (BCI's NBC affiliate), "provides significant local news service to the market and appears to distribute that programming using sister stations WOHL-CD (an ABC affiliate) and WOHL-CD2."<sup>57</sup>

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<sup>53</sup> Petition at 25.

<sup>54</sup> *Id.* at 27.

<sup>55</sup> *Id.* at 34.

<sup>56</sup> *Id.* at 33.

<sup>57</sup> *Id.* at 35 n.109. The Petition fails to note that WOHL-CD2 is the CBS affiliate.

On this last point, the Petition is entirely correct: the BCI Lima Stations, through programming produced by WLIO, provide significant and substantial local news service for Allen County. Concerning the lack of local news coverage otherwise likely to be provided to Auglaize County residents, the Petition could not be more mistaken. For the same two-year period described in the Petition, the BCI Lima Stations ran over 10,000 news, weather and sports related segments regarding Allen and Auglaize Counties.<sup>58</sup> Specifically, a review of BCI Lima Station records in each of the subject years during the relevant two-year period revealed that they aired on average 175 news, weather and sports related segments per week concerning the Allen County Communities, for a total average of 9,100 Allen County segments per year; and aired on average 20 news, weather and sports related segments per week regarding the Auglaize County Communities, for an average of 1,040 Auglaize County segments.<sup>59</sup> Moreover, for a recent two-week period, monitoring by the BCI Lima Stations found zero reports on WHIO-TV news concerning either Auglaize or Allen County and a lone weather picture of an Auglaize County area within a single newscast, together with a dense fog advisory for Auglaize County within their weather report.<sup>60</sup>

Simply put, WHIO-TV's news segment numbers pale in comparison to the number of local news segments aired by the BCI Lima Stations regarding the Auglaize and Allen County Communities. Given that Lima is the community of license for each of the BCI Lima Stations as well as the county seat for Allen County, the emphasis on local reports affecting Allen and Auglaize County is not surprising.

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<sup>58</sup> See Exhibit K, BCI Lima Stations-Auglaize County Community News Segments & L, BCI Lima Stations-Allen County Community News Segments. Because of the high number of news segments ran by the BCI Lima Stations, the totals for Allen and Auglaize Counties are based on a sampling of weekly numbers. See Exhibit A, ¶¶ 7-9 (explaining sampling methodology).

<sup>59</sup> See Exhibit A, ¶¶ 7-9.

<sup>60</sup> See *id.*, ¶ 10.

The Petition also claims that WHIO-TV routinely includes the Auglaize County Communities on all local and regional weather maps used in daily weather reports during the station's newscasts, and since 2010, has aired more than 120 severe weather watches and warnings for weather events in Auglaize County.<sup>61</sup> No similar claims are made with respect to Allen County. The BCI Lima Stations include both the Auglaize County Communities and the Allen County Communities in their weather coverage, including Allen County alerts that WHIO-TV does not carry.<sup>62</sup> Further, the Petition makes similar weather coverage claims for the Wayne County Indiana communities thus demonstrating the vast area over which the station is trying to claim it is providing "local" coverage.<sup>63</sup> In contrast to WHIO-TV's inclusion only of Auglaize County in its regional weather coverage, the BCI Lima Stations provide truly local weather coverage and severe weather alerts to both the Auglaize County and the Allen County Communities. Where WHIO-TV's main interest in weather events is for the metro Dayton and greater Miami Valley area, the BCI Lima Stations prioritize weather warnings for Auglaize and Allen Counties. In contrast, for wide area weather events, Auglaize County is a secondary or tertiary interest for WHIO-TV, which often covers the aftermath of a storm's destruction, but not the pre-storm warning.<sup>64</sup> In addition to live weather coverage in Auglaize County by WLIO's staff of three meteorologists, the BCI Lima Stations, including the BCI Lima CBS station, participate in weather and other emergency related alerts through Emergency Alert System warnings for Auglaize County.<sup>65</sup>

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<sup>61</sup> Petition at 26; *id.*, Exhibit O.

<sup>62</sup> See Exhibit M, Severe Weather Alert.

<sup>63</sup> Petition at 15.

<sup>64</sup> Exhibit A, ¶ 11.

<sup>65</sup> One case in point is the June 29, 2012 "Derecho" storm which affected Auglaize and Allen counties. See NOAA, The Ohio Valley / Mid-Atlantic Derecho of June 2012, <http://www.spc.noaa.gov/misc/AbtDerechos/casepages/jun292012page.htm>. WOHL-CD CBS interrupted local

The Petition also points to its coverage of high school football teams from the Auglaize and Allen County Communities during its weekly *Touchdown 7* program.<sup>66</sup> The Petition states that WHIO-TV's *Touchdown 7* program consists of game day highlights and reporting of high school football scores from "around the region."<sup>67</sup> The "region" served by WHIO's *Touchdown 7* program, based on the current Dayton DMA, currently consists of 11 counties and includes the large Dayton schools. The Petition makes the same argument to include the Wayne County Indiana communities, with the only difference being that the Petition expressly notes that the Wayne County Indiana high schools were actually featured in game-day highlights.<sup>68</sup> Suffice it to say the attention to the smaller rural schools on *Touchdown 7*, absent a major conference showdown game, is going to consist only of the score. For example, on the opening weekend of the Ohio high school football season, the WHIO-TV Friday night *Touchdown 7* show featured no game day highlights from the Auglaize and Allen County Community team games.<sup>69</sup> The BCI Lima Stations "Football Friday Night" program, on the other hand, included game day highlights from games featuring Auglaize and Allen County communities along with scores from other games involving Auglaize County and Allen County schools.<sup>70</sup> The BCI Lima Station's Football Friday Night program airs on the BCI NBC, ABC and CBS station and provides this type of in-

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program hours to provide storm details before the storm hit Auglaize and Allen Counties. Not surprisingly, WHIO-TV concentrated its coverage on the Miami Valley region. WHIO-TV did provide some coverage in Auglaize after the storm hit, showing destruction, but this did not provide a public service of warning people as WOHL-CD CBS did. In addition, the BCI Lima Station's combined website, hometownstations.com, has an Auglaize County News tab. Hometownstations.com, <http://www.hometownstations.com/category/203266/auglaize-county-stories>. Exhibit A, ¶ 11. In contrast, WHIO-TV's website does not feature a news tab for either Auglaize or Allen Counties, displaying instead a more generalized "Northern Bureau" webpage. See whiotv.com, Northern Bureau Headlines, <http://www.whiotv.com/list/news/local/northern-bureau-headlines/aJfS/>.

<sup>66</sup> Petition at 27, 34.

<sup>67</sup> *Id.* at 27.

<sup>68</sup> *Id.* at 16.

<sup>69</sup> See Exhibit A, ¶ 15.

<sup>70</sup> For its first broadcast on Aug. 30, 2013, the "Football Friday Night" program featured on-site coverage of five Auglaize County teams and six Allen County schools, including the Lima Senior High Game against a Kentucky high school team being played at the University of Cincinnati. See *id.*

depth coverage of Auglaize and Allen County high schools throughout the season. In short, similar to its weather coverage, WHIO-TV's sports coverage is spread out over an 11-county region consisting of Dayton and several other larger schools; the BCI Lima Stations concentrate on what are truly local high school sports, primarily in the Allen, Auglaize and Putnam County Communities.

It is noteworthy that to demonstrate local service in the Auglaize and Allen County communities, WHIO-TV relies solely on evidence of its regional news, weather and other programming concerning those areas. Yet the BCI Lima Stations' local involvement in the Auglaize and Allen County Communities goes far beyond simply providing coverage of local news and events. Their extensive local involvement includes the sponsorships of various festivals and celebrations in Auglaize and Allen County; sponsorship of local high school athletes in the two counties; charitable donations to groups and organizations within the two counties; memberships in local Chambers of Commerce for both Counties; and leadership roles in various civic and economic development organizations by BCI Lima Stations local executives, including their Executive Vice President and General Manager's serving as Co-Chairman of the Lima United Way fund.<sup>71</sup>

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<sup>71</sup> Exhibit A, ¶¶ 16, 18. In Auglaize County, the BCI Lima Stations support three local groups – the Armstrong Air & Space Museum; Lake Improvement Association; and KDK-Kidz Drama Klub-St. Marys – by running public service announcements. They serve as in-kind sponsor for the Women in Business Conference, St. Marys Summer Festival, and Governor's Cup Regatta. The BCI Lima Stations are represented on the Wapakoneta Chamber of Commerce, S.W. Auglaize County Association, and St. Mary's Chamber of Commerce. The stations sponsor programs to honor students throughout Auglaize County, such as the McDonald's Scholar Athlete and Ohio Lottery Best of the Class programs. The stations' support in Allen County is even more extensive. For example, to date in 2013, the BCI Lima Stations provide in-kind cash support to local initiatives in Allen County such as volunteerism campaigns, blood and food drives, health, arts and educational efforts of twelve groups and charities – Salvation Army, United Way; American Cancer Society; Red Cross; West Ohio Food Bank; Veterans Services; Multiple Sclerosis Bike 30; Artspace Lima; SAF; Law Enforcement Coalition; Armstrong Air & Space Museum; and Shriner's Hospital – valued at \$85,175. For the same period, the BCI Lima Stations have provided cash support valued at \$9,700 to five Allen County groups – Lima Convalescent Home; Lima Symphony Orchestra; Lima Noon Optimists; St. Rita's Development Fund; and Allen County Visionaries. BCI Executive Kevin Creamer, Vice President and General Manager ABC/CBS/FOX/NBC Lima, participates in/belongs to five Allen County organizations – Lima/Allen County Chamber of Commerce (Market Committee Member); Allen County Visionaries

Commission precedent does not support WHIO-TV's argument concerning local programming. In similar cases, the Commission has noted that a claim of providing local programming "is of less weight when viewed in relation to that provided by" an in-market station, such as the BCI Lima Stations, including WOHL-CD 35.2, its CBS station.<sup>72</sup> Thus, this factor is not weighed in favor of market modification where the "frequency and subject matter" of the in-market affiliates' programming "reflects more extensive coverage of news and other local interests than that provided by [the petitioner]."<sup>73</sup>

**C. Ratings Alone Do Not Show Reassignment Is Warranted.**

WHIO-TV cites its favorable ratings in Auglaize and Allen Counties and concludes that the fourth statutory factor is met.<sup>74</sup> However, good ratings do not necessarily equate to a mistake by Nielsen in determining the appropriate DMA for a community nor do they demonstrate that the requested area is a part of WHIO-TV's natural economic market. Rather, the Commission is directed to "afford particular attention to the value of localism" when considering requests for market modification.<sup>75</sup> In the instant case, given the substantial local programming provided by the BCI Lima Stations, localism would be furthered by denying WHIO's Petition.

Further, Nielsen just recently reviewed the past 4 combined surveys from May 2012 through February 2013 as part of its 2013-2014 DMA Review and determined that Auglaize

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(Board Member); United Way of Allen County (Co-Chair); Task Force Lima (Committee Member); and Downtown Lima Association (via donations/dues). To reach out to outlying communities in both Auglaize and Allen County, the BCI Lima Stations run an innovative "Four Second Identification Program" consisting of an audio message "Thank you [community] for watching your Hometown Stations" together with the appropriate network logo. The Four Second Identification Program reaches the Auglaize communities of Minster, New Bremen, New Knoxville, St. Marys, Wapakoneta, and Waynesfield. It reaches the Allen County communities of Bluffton, Delphos, Elida, Lafayette, Harrod, Spencerville and Westminster. *Id.* at ¶¶ 15-17.

<sup>72</sup> *Group W Television*, 10 FCC Rcd 2737, ¶ 22.

<sup>73</sup> *Id.*

<sup>74</sup> Petition at 27-29, 35-36.

<sup>75</sup> 47 U.S.C. § 534(h)(1)(C)(ii).



County should be in the Lima DMA. The decision to move Auglaize County to the Lima DMA was based on the fact that the Lima DMA achieved “a larger share of viewing than the current DMA region and that share difference is determined to be statistically significant, i.e. the difference is not simply due to sampling variation.”<sup>76</sup> Thus the most recent analysis by Nielsen places Auglaize County in the Lima DMA.

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A review of the three statutory factors relied upon in the Petition demonstrates that WHIO-TV has failed to meet its burden of proof to obtain a market modification for either the Auglaize County or Allen County Communities. The communities are far more closely tied and adequately served by the BCI Lima Stations, including the BCI Lima in-market CBS station. The Petition accordingly should be denied as it relates to all of the Auglaize and Allen County Communities.

### **III. THE ADDITIONAL FACTOR OF ECONOMIC MARKET NEXUS COMPELS DENIAL OF THE PETITION**

WHIO-TV also relies on the factor of its “strong ties to Auglaize County Advertisers” and its use by Allen County Advertisers to support its Petition.<sup>77</sup> This claim falters under scrutiny. WHIO cites by way of example only three Auglaize County advertisers who use WHIO-TV for their advertising, and only one Allen County advertiser.<sup>78</sup> In contrast, the more proximate BCI Lima Stations during the period from November, 2011 through August 2013 had 117 advertising accounts from Auglaize County and 539 advertising accounts from Allen

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<sup>76</sup> See Exhibit F.

<sup>77</sup> Petition at 29-30 (“economic and commercial ties between WHIO-TV and the Auglaize County Communities are demonstrated by all types of advertisers seeking to reach their customers in those communities”); *id.* at 36-37 (Allen County advertisers “use WHIO-TV as a key part of their advertising strategies”).

<sup>78</sup> Petition at 29, 36 (Auglaize – RRR Tire Service; Buckeye Farm Antiques, Inc. of Wapakoneta; and the annual Country Concert; Allen – Specialized Alternative for Family and Youth (“SAFY”).

County.<sup>79</sup> Not only does WHIO-TV's evidence on retail linkages fail to support grant of the Petition, to the contrary, it overwhelmingly argues against such action. The evidence shows that very few advertisers in these counties use WHIO-TV to reach their customers. It is the BCI Lima Stations that have the strongest and deepest economic nexus to the greatest number of advertisers in the Auglaize and Allen County Communities.

#### **IV. THE PETITION SHOULD ALSO BE DENIED AS IT WOULD FRUSTRATE THE ECONOMIC EXPECTATIONS UNDERLYING THE BCI LIMA CBS STATION'S NETWORK AFFILIATION AGREEMENT**

Market modification requests have been consistently denied where the grant would undermine the economic expectations of the in-market stations underlying network affiliation agreements.<sup>80</sup> For example in *Free State*, KTKA, an ABC affiliate located in the Topeka Kansas DMA, sought to add certain communities in the Kansas City DMA which were already served by an ABC affiliate from Kansas City – KMBC. The Media Bureau denied the request, stating that in “such a circumstance, we are especially concerned that our decision not unduly upset the economic marketplace expectations underlying the affiliation concept.” Therefore, we must take

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<sup>79</sup> See Exhibit N, BCI Lima Stations Auglaize County Advertisers; Exhibit O, BCI Lima Stations Allen County Advertisers.

<sup>80</sup> See *Guy Gannett Communications, Inc.; For Modification of the Portland-Poland Spring, Maine ADI Market*, CSR-5289-A, Memorandum Opinion and Order, 13 FCC Rcd 23470 ¶¶ 22, 25 (CSB, 1998) (“*Guy Gannett*”) (declining to modify market for an out-of-market CBS affiliate where grant of the petition would jeopardize an in-market CBS affiliate’s “must carry station within its own ADI market” to avoid “interfere[ing] with the present affiliate relationship of the relevant ADIs or change the status quo of the stations involved”), *affirmed on recon.*, 15 FCC Rcd 10762 ¶ 13 (CSB, 2000) (“In any instance where a network affiliate attempts to encroach into another market the potential effect can be severe and must be taken into account”); *Broad Street Television, L.P. Davenport, Iowa For Modification of Station KWQC-TV's ADI*, CSR-3868-A, Memorandum Opinion and Order, 10 FCC Rcd 5576 (1995) (declining to modify market in part because it would “relegate [the in-market] market NBC station, ... which itself places a Grade B contour over the communities in question, to the status of the more distant network affiliate, a move which would jeopardize [its] must carry status within its own ADI market”); *Harron Communications Corp.; For Modification of the Portland-Poland Spring, Maine ADI Market*, CSR-5325-A, Memorandum Opinion and Order, 14 FCC Rcd 4547 ¶ 28 (1999) (declining to modify market given in-market affiliate’s viewership in the cable communities and there accordingly being “no reason to interfere with the present affiliate relationship of the relevant ADIs or change the *status quo* of the stations involved”); *Free State*, 24 FCC Rcd 7339 ¶ 25 (declining to modify market “because addition of the requested communities would violate the economic marketplace expectations underlying the affiliation concept”).

into account the effect a grant of must carry status to KTKA [petitioner-out-of-market] will have on KMBC [in-market station].”<sup>81</sup> The Commission has particularly acknowledged that marketplace expectations could be upset where granting must carry rights to the out-of-market station would, because of its being in closer proximity to the system, allow the out-of-market station to be selected as the local must-carry station in instances where both stations elect mandatory signal carriage.<sup>82</sup>

The underlying concept in these decisions is that the Commission should not modify a market when the action would result in the in-market station losing the economic expectations of its network affiliation agreement. In this case, the grant of must carry rights to WHIO-TV within the core of the Lima DMA would severely upset the economic expectations of BCI’s network affiliation agreement with CBS. BCI bargained for and pays consideration for the right to be the CBS affiliate in the Lima DMA and to receive the economic benefits of that affiliation, including the right to sell local advertising time on the CBS programming.<sup>83</sup> BCI realizes that WHIO-TV is significantly viewed in Allen and Auglaize Counties and thus carriage of the WHIO-TV CBS programming is not subject to network non-duplication demands.<sup>84</sup> BCI also realizes that as a

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<sup>81</sup> *Free State*, ¶ 22 (emphasis added).

<sup>82</sup> See, e.g., *Guy Gannett*, 13 FCC Rcd 23470 ¶ 15 (“due to the fact that Portland, WGME-TV’s [petitioner-out-of-market] city of license, is slightly closer to the cable system’s principal headend than is Boston, carriage of WBZ-TV [in-market-station] could be at risk should WGME-TV’s request be granted”); 47 C.F.R. §§ 76.56(b)(4)(ii) ([Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry... the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that] “If the cable operator elects to carry an affiliate of a broadcast network, as defined in § 76.55(f), such cable operator shall carry the affiliate of such broadcast network whose community of license reference point, as defined in § 76.53, is closest to the principal headend, as defined in § 76.5(pp), of the cable system”) & (b)(5) (“if a cable operator declines to carry duplicating signals, such cable operator shall carry the station whose community of license reference point, as defined in § 76.53, is closest to the principal headend of the cable system”).

<sup>83</sup> Exhibit A, ¶ 19.

<sup>84</sup> See 47 C.F.R. § 76.92(f) (“A community unit is not required to delete the duplicating network programming of any television broadcast station which is significantly viewed in the cable television community pursuant to § 76.54”).

Class A CD low-power station, the BCI Lima CBS affiliate cannot exercise must carry rights. However BCI's expectation was that as the in-market CBS affiliate, it would be in a position to negotiate carriage on seemingly equal terms with out-of-market stations because no other CBS affiliate could demand must carry within the Lima DMA – thus it would be in the same position to compete for carriage as any other CBS affiliate in the greater area. A grant of the Petition would deeply undercut BCI's economic expectations.

The Commission's grant of must carry rights would give WHIO-TV the opportunity to gain by regulatory fiat what properly should be awarded based on the competitive market place – guaranteed carriage of its signal in the Auglaize and Allen Cable Communities. For example, Time Warner Cable currently carries the BCI Lima CBS station as its sole CBS high definition ("HD") feed in the Allen County Communities.<sup>85</sup> If the Petition were granted, WHIO-TV could elect must carry and require Time Warner Cable and other cable operators to carry the WHIO-TV CBS feed, including the HD feed. Time Warner Cable, like many other cable operators, offer only one HD channel per network affiliation on a system.<sup>86</sup> A grant of the Petition would accordingly result in such systems dropping the in-market BCI Lima CBS station HD signal, and possibly the BCI Lima CBS station altogether.

Granting WHIO-TV must carry rights throughout the Auglaize and Allen County Communities, including Lima itself, would seriously weaken the in-market CBS affiliate owned by BCI, threatening all the benefits of localism delivered by the BCI Lima Stations and enjoyed by one of the smallest DMAs. Smaller market television stations are economically weaker than their large market counterparts, and require greater financial support to deliver service. BCI's NBC station's ability to provide its comprehensive local news coverage would be weakened if it

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<sup>85</sup> Exhibit A, ¶ 18.

<sup>86</sup> See, e.g., Petition, Exhibits L & Q.

loses the support of its sister CBS station. WHIO-TV should not be given such a competitive and unnecessary advantage over the BCI Lima stations, particularly the BCI Lima CBS station. WHIO-TV's Petition accordingly should be denied.

**V. WHIO-TV'S REQUEST FOR SPECIAL RELIEF FROM THE NIELSEN DMA ASSIGNMENTS IS UNAUTHORIZED AND SHOULD BE DENIED**

WHIO-TV notes that if the Commission should find that it is not entitled to relief under the traditional tests for market modification, the Commission should still grant it relief through a Declaratory Ruling dictating Auglaize County's local market assignment and thus permanently removing Auglaize County from the scope of traditional Nielsen determinations and assigning it to a specific DMA.<sup>87</sup> Such relief would be entirely inappropriate and the Commission should decline the invitation to insert itself into the Nielsen DMA assignment process in this manner. In the event the Commission finds that WHIO-TV has failed to meet the statutory criteria for market modification and thereby show that the public interest mandates the requested modification, there is no conceivable basis for the Commission to then simply declare, in effect, that despite WHIO-TV's failure to show that it is "local" to the Auglaize and Allen County Communities, the Commission should nonetheless declare that it is. WHIO-TV's request for such extraordinary and unprecedented relief should be denied.

**VI. CONCLUSION**

For the foregoing reasons, the Commission should deny the Petition for market modification pursuant to Sections 76.7(a)(1) and 76.59(a) of the Commission's rules as it relates to the Auglaize and Allen County Communities. WHIO-TV has failed to demonstrate that it satisfies the statutory factors, or any other criteria, demonstrating that these communities belong in its natural local television market. For the same reasons, the Commission should reject

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<sup>87</sup> Petition at 20 n.65.

WHIO-TV's alternative request that the Commission simply declare Auglaize County's proper market assignment to be the Dayton DMA pursuant to its general authority to issue declaratory rulings under Section 1.3 of its rules.

Respectfully submitted,

BLOCK COMMUNICATIONS, INC.  
LIMA COMMUNICATIONS  
CORPORATION  
WEST CENTRAL OHIO BROADCASTING  
CORPORATION

By: 

Barbara S. Esbin  
Bruce E. Beard  
Elvis Stumbergs

CINNAMON MUELLER  
1333 New Hampshire Ave., N.W.  
2<sup>nd</sup> Floor  
Washington, DC 20036

*Their Attorneys*

Dated: September 3, 2013

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
Miami Valley Broadcasting Corporation	)	MB Docket No. 13-201
	)	
For Modification of the Television Market	)	CSR No. CSR-8824-A
For WHIO-TV-TV, Dayton, Ohio	)	
	)	Facility Id. No. 41458
To: Office of the Secretary		
Attn: Chief, Policy Division, Media Bureau		

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**DECLARATION OF KEVIN CREAMER**

1. My name is Kevin Creamer. I am employed by the Lima Communications Corporation and West Central Ohio Broadcasting Corporation, subsidiaries of Block Communications, Inc. ("BCI"), as Executive Vice President/General Manager of WLIO and Executive Vice President/General Manager of WOHL-CD, BCI's licensed broadcast television stations in Lima, Ohio.
2. I hereby declare under penalty of perjury that I have reviewed the foregoing Opposition to Petition for Special Relief and am familiar with the contents thereof, and that, to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law, and that it is not interposed for any improper purpose.



\_\_\_\_\_  
By: Kevin Creamer

Address: 1424 Rice Ave.  
Lima, Ohio 45805

September 3, 2013

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
Miami Valley Broadcasting Corporation	)	MB Docket No. 13-201
	)	
For Modification of the Television Market	)	CSR No. CSR-8824-A
For WHIO-TV, Dayton, Ohio	)	
	)	Facility Id. No. 41458
To: Office of the Secretary		
Attn: Chief, Policy Division, Media Bureau		

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**DECLARATION OF BARBARA S. ESBIN**

I, Barbara S. Esbin, hereby declare under penalty of perjury that I have reviewed the foregoing Opposition to Petition for Special Relief and that, to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law and is not interposed for any improper purpose.

  
Barbara Esbin

By: Barbara S. Esbin

September 3, 2013



## **CERTIFICATE OF SERVICE**

I, Alma Hoxha, paralegal with Cinnamon Mueller, hereby certify that a true and correct copy of the foregoing Opposition to Petition for Special Relief was delivered by me to the United States Postal Office on September 3, 2013 to be delivered to the person listed below via first-class, postage prepaid mail:

Steven Broeckaert  
Deputy Chief, Policy Division  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

William Lake  
Chief, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

WHMB  
LeSEA Broadcasting of Indianapolis, Inc.  
10511 Greenfield, Avenue  
Noblesville, IN 46060  
Attn: General Manager

WDTN Broadcasting  
Attn: General Manager  
4595 S. Dixie Drive  
Dayton, OH 45439

WRGT Licensee LLC  
Attn: General Manager  
45 Broadcast Plaza  
Dayton, OH 45408

Claudia Tillery  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

WISH-TV  
Indiana Broadcasting LLC  
P.O. Box 7088  
Indianapolis, IN 46207  
Attn: General Manager

WLIO  
Lima Communications Corp.  
1424 Rice Avenue  
Lima, OH 45802  
Attn: General Manager

WTLW  
American Christian TV Services, Inc.  
1844 Baty Road  
Lima, OH 45807  
Attn: General Manager

WKEF Licensee LP  
1731 Soldiers Home Road  
Dayton, OH 45418  
Attn: General Manager

WKOI- TV  
Trinity Broadcasting Network, Inc.  
1702 S. 9<sup>th</sup> Street  
Richmond, IN 47374  
Attn: General Manager

WCLJ-TV  
Trinity Broadcasting Network, Inc.  
2528 US 31 South  
Greenwood, IN 46143  
Attn: General Manager

WIPX-TV  
ION Media Indianapolis License, Inc.  
2441 Production Dr., STE 104  
Indianapolis, IN 46241  
Attn: General Manager

Comcast of Illinois/Indiana/Ohio, LLC  
One Comcast Center  
Philadelphia, PA 19103

WTTK, WXIN, and WTTV  
Tribune Broadcasting Indianapolis, LLC  
6910 Network Place  
Indianapolis, IN 46278

WBDT Television LLC  
4595 S. Dixie Drive  
Dayton, OH 45439  
Attn: General Manager

TSC Communications, INC.  
2 Willipie St.  
P.O. Box 408  
Wapakoneta, OH 45895

Indiana Utility Regulatory Commission  
National City Center  
101 West Washington Street  
Suite 1500 East  
Indianapolis, IN 46204

WTHR - VideoIndiana, Inc.  
1000 N. Meridian Street  
P.O. Box 1313  
Indianapolis, IN 46206  
Attn: General Manager

WNDY-TV  
Indiana Broadcasting LLC  
1950 N. Meridian Street  
Indianapolis, IN 46202  
Attn: General Manager

WRTV  
Scripps Media Inc.  
1330 N. Meridian Street  
Indianapolis, IN 46202  
Attn: General Manager

Time Warner Cable Midwest, LLC  
13820 Sunrise Valley Drive  
Herndon, VA 20171

Ohio Department of Commerce  
Attn: Video Services Division  
77 S. High Street, 23<sup>rd</sup> Floor  
Columbus, OH 43215

Shawnee Township  
Administration Building  
2530 Ft. Amanda Road  
Lima, OH 45804

New Knoxville Telephone Company  
301 W. South Street  
P.O. Box 219  
New Knoxville, OH 45871



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Alma Hoxha  
Paralegal

## **TABLE OF EXHIBITS**

<b>No.</b>	<b>Title</b>
A	Declaration of Kevin Creamer
B	BCI Lima Station Coverage Maps
C	Cable Systems Carrying BCI Lima Stations in Auglaize and Allen Counties
D	BCI Lima CBS Station Ratings Increase
E	Composition History of Lima DMA
F	Nielsen Auglaize County Letter
G	CBS Station Historical Carriage
H	Census Information-Impact of Grant
I	Cable System Historical Carriage of Non-Dayton Stations
J	Lima Metropolitan Statistical Area History
K	BCI Lima Stations-Auglaize County Community News Segments
L	BCI Lima Stations-Allen County Community News Segments
M	Severe Weather Alert
N	BCI Lima Stations Auglaize County Advertisers
O	BCI Lima Stations Allen County Advertisers